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6 Attorneys for Defendants
 7 ORTHO-MCNEIL PHARMACEUTICAL, INC., now
 known as ORTHO-McNEIL-JANSSEN
 8 PHARMACEUTICALS, INC.,
 and MCKESSON CORPORATION

9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA

11 SAN FRANCISCO DIVISION

12 CAROLYN GLAZINER, an individual;

13 Plaintiff,

14 v.

15 ORTHO-MCNEIL PHARMACEUTICAL,
 16 INC., a Delaware Corporation;
 MCKESSON CORP. and DOES 1-500,
 inclusive,

17 Defendants.

18 Case No. 08

1989

20 **DECLARATION OF HILLARY S.**
WEINER IN SUPPORT OF NOTICE
OF REMOVAL AND REMOVAL OF
ACTION UNDER 28 U.S.C. § 1441(B)
[DIVERSITY]

21 I, HILLARY S. WEINER, declare:

22 1. I am an attorney admitted to practice before all courts of the State of
 23 California and am an associate with the law firm of Drinker Biddle & Reath, LLP,
 24 attorneys for defendants Ortho-McNeil Pharmaceutical, Inc. ("OMP"), now known as
 25 Ortho-McNeil-Janssen Pharmaceuticals, Inc. ("OMJPI"), and McKesson Corporation
 26 ("McKesson") in this action. I make this Declaration based on my personal knowledge,
 27 in support of the removal by OMP, now known as OMJPI, of *Carolyn Glaziner v. Ortho-*
28 McNeil Pharmaceutical, Inc., McKesson Corp., and Does 1-500, inclusive, Case Number

1 CGC-07-469227 to this Court. I would and could competently testify to the matters
 2 stated in this Declaration if called as a witness.

3 2. A true and accurate copy of the Complaint (the “Complaint”) in this action
 4 is attached as **Exhibit A**. The Complaint is the only state court pleading known to OMP,
 5 now known as OMJPI, and to McKesson to have been filed in this action.

6 3. OMP was a corporation existing under the laws of the State of Delaware,
 7 with its principal place of business in New Jersey, and is now known as OMJPI, which is
 8 a Pennsylvania corporation, with its principal place of business also in New Jersey.
 9 OMP, now known as OMJPI, was served with the Summons and Complaint in this action
 10 on March 21, 2008.

11 4. McKesson was served with the Summons and Complaint in this action on
 12 March 24, 2008. McKesson consents to removal of this action to this Court.

13 5. OMP, now known as OMJPI, will file a notice of the filing of this Notice of
 14 Removal and Removal in the San Francisco County Superior Court and will serve
 15 plaintiff’s counsel with a copy.

16 6. On March 1, 2006, the Judicial Panel on Multidistrict Litigation (“JPML”)
 17 created MDL 1742, *In re: Ortho Evra Products Liability Litigation*, ruling that all
 18 federal actions involving allegations of injury or death from use of the prescription drug
 19 Ortho Evra® be centralized for pre-trial purposes in the United States District Court for
 20 the Northern District of Ohio, before the Honorable David A. Katz, Case Number 1:06-
 21 CV-40000-DAK. To date, over 1200 cases have been transferred to MDL 1742, and
 22 transfers of additional “tag-along” actions are pending.

23 7. Attached as **Exhibit B** is a true and accurate copy of the Declaration of
 24 Greg Yonko, Senior Vice President – Purchasing, McKesson Corporation, filed in *Abel,*
 25 *Theresa, et al. v. Ortho-McNeil Pharmaceutical, Inc., et al.*, United States District Court,
 26 Northern District of California, Case No. C 06 7551 SBA, on December 8, 2006.

27 8. Attached as **Exhibit C** is a true and accurate copy of the Slip Opinion
 28 denying the plaintiffs’ motion to remand in *Barlow, et al. v. Warner-Lambert Co., et al.*,

1 Case No. CV 03-1647-R(RZx), in the United States District Court for the Central District
2 of California (Western Division), dated April 28, 2003.

3 9. Attached as **Exhibit D** is a true and accurate copy of the Slip Opinion
4 denying the plaintiffs' motion to remand in *Skinner, et al. v. Warner-Lambert Co., et al.*,
5 Case No. CV 03-1643-R(RZx), in the United States District Court for the Central District
6 of California (Western Division), dated April 28, 2003.

7 10. I have reviewed reports of verdicts and settlements in cases in this judicial
8 district, brought by plaintiffs claiming serious injuries from the use of prescription drugs
9 or medical devices. Given the similarity between the injuries alleged in those cases and
10 plaintiff's claims, it is reasonably believed that if plaintiff succeeded in proving her
11 allegations in this action, she would recover in excess of \$75,000, exclusive of interest
12 and costs. Plaintiffs claiming substantially similar injuries in the Ortho Evra® MDL
13 have specifically alleged that the amount in controversy in their respective actions
14 exceeds \$75,000, exclusive of interest and costs.

15 I declare under penalty of perjury under the laws of the United States of America that
16 the foregoing is true and correct. Executed on April 16, 2008.

Hillary S. Weiner
HILLARY S. WEINER

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16 Attorneys for Plaintiffs

17
18 SUPERIOR COURT OF THE STATE OF CALIFORNIA
19 COUNTY OF SAN FRANCISCO

20 CAROLYN GLAZINER, an individual,) Case No.
21 Plaintiffs)
22 v.) COMPLAINT FOR DAMAGES BASED
23 ORTHO-MCNEIL PHARMACEUTICAL,) ON:
24 INC., a Delaware Corporation; MCKESSON)
25 CORP and DOES 1-500, inclusive,)
Defendants)
1. NEGLIGENCE
2. STRICT PRODUCT LIABILITY -
FAILURE TO WARN
3. BREACH OF EXPRESS
WARRANTY
4. BREACH OF IMPLIED
WARRANTY
5. NEGLIGENT
MISREPRESENTATION
6. FRAUD

26
27
28 DEMAND FOR JURY TRIAL

1
29 COMPLAINT FOR DAMAGES

1 Plaintiffs allege as follows:

2 **INTRODUCTION**

3 1. Plaintiffs are all individuals who have consumed Defendant ORTHO-MCNEIL
4 PHARMACEUTICAL INC.'s drug Ortho Evra® (hereinafter referred to as "Ortho Evra". Each
5 of the Plaintiff's herein have suffered and/or may continue to suffer potentially fatal side effects
6 such as strokes, pulmonary emboli, blood clots, deep vein thrombosis, and heart attacks.

7 2. Defendant ORTHO-MCNEIL PHARMACEUTICAL INC (hereinafter "ORTHO-
8 MCNEIL") designed, researched, manufactured, advertised, promoted, marketed sold and/or
9 distributed Ortho Evra. Furthermore, Defendant ORTHO-MCNEIL concealed its knowledge of
10 Ortho Evra's risks and trivialized the serious side effects of Ortho Evra from Plaintiffs,
11 Plaintiff's physicians, pharmacists and the public in general.

12 3. Defendant MCKESSON CORP ("hereinafter "MCKESSON") is a corporation
13 whose principle place of business is San Francisco, California. MCKESSON distributed and sold
14 Ortho Evra in and throughout the State of California.

15 4. Ortho Evra is an adhesive transdermal birth control patch that delivers continuous
16 levels of the hormones progestin and estrogen through the skin and into the blood stream to
17 prevent pregnancy. Ortho Evra was approved by the FDA in November 2001 and since has been
18 used by over 4 million women. On November 10, 2005 the FDA issued a warning about the
19 increased risks of blood clots associated with the use of Ortho Evra. Specifically, users of Ortho
20 Evra are exposed to 60% more total estrogen in their blood than users of the typical birth control
21 pill which contains 35 micrograms of estrogen.

22 **JURISDICTION AND VENUE**

23 5. The California Superior Court has jurisdiction over this action pursuant to
24 California Constitution Article VI, Section 10, which grants the Superior Court "original
25 jurisdiction in all causes except those given by statute to other trial courts." The Statutes under
26 which this action is brought do not specify any other basis for jurisdiction.
27

28 6. The California Superior Court has jurisdiction over the Defendants because,

1 based on information and belief, each is a corporation and/or entity and/or person organized
2 under the laws of the State of California, a foreign corporation or association authorized to do
3 business in California and registered with the California Secretary of State or has sufficient
4 minimum contacts in California, is a citizen of California, or otherwise intentionally avails itself
5 of the California market so as to render the exercise of jurisdiction over it by the California
6 courts consistent with traditional notions of fair play and substantial justice.

7 7. Venue is proper in this Court pursuant to California Code of Civil Procedure
8 Section 395 in that Defendant MCKESSON has its principle place of business in San Francisco.

9 8. Furthermore Defendants ORTHO-MCNEIL and MCKESSON have purposefully
10 availed themselves of the benefits and the protections of the laws within the State of California.
11 Defendant MCKESSON has its principle place of business within the state. Defendants ORTHO-
12 MCNEIL and MCKESSON have had sufficient contact such that the exercise of jurisdiction
13 would be consistent with the traditional notions of fair play and substantial justice.

14 9. Plaintiffs each individually seek relief that is within the jurisdictional limits of the
15 court.

16 **PARTIES**

17 **PLAINTIFFS**

18 10. Plaintiff CAROLYN GLAZINER is a resident of Terre Haute, Indiana, who was
19 prescribed Ortho Evra and was severely injured as a result..

20 **DEFENDANTS**

21 11. Defendant ORTHO-MCNEIL is, and at all times material to this action was, a
22 corporation organized, existing and doing business under and by the virtue of the laws of the
23 State of Delaware, with its principle office located at 1000 Route 202 South, P.O. Box 300,
24 Raritan, New Jersey 08869.

25 12. Defendant ORTHO-MCNEIL is, and at all times material to this action was,
26 authorized to do business, and was engaged in business in the State of California. ORTHO-
27 MCNEIL derives substantial revenue from goods consumed within the State of California.

28 13. Defendant ORTHO-MCNEIL includes any and all parents, subsidiaries, affiliates,

1 divisions, franchises, partners, joint venturers and organizational units of any kind, their
2 predecessors, successors and assigns and their present officers, directors, employees, agents,
3 representatives and other persons acting on their behalf.

4 14. Plaintiffs are informed and believe, and based thereon allege, that in committing
5 the acts alleged herein, each and every managing agent, agent, representative and/or employee of
6 the defendant was working within the course and scope of said agency, representation and/or
7 employment with the knowledge, consent, ratification, and authorization of the Defendant and its
8 directors, officers and/or managing agents.

9 15. At all times material to this action, Defendant ORTHO-MCNEIL developed,
10 manufactured, marketed, promoted, sold and/or distributed Ortho Evra in the stream of
11 commerce and in the State of California and the rest of the country.

12 16. Defendant MCKESSON is, and at all times material to this action was, a
13 corporation organized, existing and doing business under and by virtue of the laws of the State of
14 Delaware, with its principle place of business in San Francisco, California. MCKESSON is, and
15 at all times material to this action was, authorized to do business, and was engaged in substantial
16 commerce and business under the laws of the State of California.

17 17. Defendant MCKESSON includes any and all parents, subsidiaries, affiliates,
18 divisions, franchises, partners, joint venturers and organizational units of any kind, their
19 predecessors, successors and assigns and their present officers, directors, employees, agents,
20 representatives and other persons acting on their behalf.

21 18. Plaintiffs are informed and believe, and based thereon allege, that in committing
22 the acts alleged herein, each and every managing agent, agent, representative and/or employee of
23 Defendant MCKESSON was working within the course and scope of said agency, representation
24 and/or employment with the knowledge, consent, ratification and authorization of the defendant
25 and its directors, officers and/or managing agents.

26 19. At all times relevant to this action, Defendant MCKESSON packaged, distributed,
27 supplied, sold, placed into the stream of commerce, labeled, described, marketed, advertised,
28 promoted and purported to warn or to inform users regarding the risks pertaining to, and

1 assuaged concerns about the pharmaceutical Ortho Evra.

2 20. The true names and capacities, whether individual, corporate, associate, or
3 otherwise, of Defendants named herein as DOES 1 through 500, and each of them, are unknown
4 to Plaintiffs, who therefore, sue said Defendants by such fictitious names.

5 21. Plaintiffs will ask leave to amend this Complaint to state said Defendants' true
6 identities and capacities when the same has been ascertained.

7 22. Plaintiffs are informed and believe and based thereupon allege that each of the
8 Defendants designated herein as DOE took part in and participated with the Defendant in all
9 matters referred to herein and was in some manner responsible for the injuries and losses
10 suffered by the Plaintiffs.

11 23. Plaintiffs are informed and believe and based thereupon allege that at all times
12 herein mentioned each of the Defendants was the agent, servant and/or employee or occupied
13 other relationships with each of the other named Defendants and at all times herein mentioned
14 acted within the course and scope of said agency and/or employment and/or other relationship
15 and each other Defendant has ratified, consented to, and approved the acts of his agents,
16 employees, and representatives, and that each actively participated in, aided and abetted, or
17 assisted one another in the commission of the wrongdoing alleged in this Complaint.

18 **GENERAL ALLEGATIONS APPLICABLE**
19 **TO ALL CAUSES OF ACTION**

20 24. ORTHO-MCNEIL is the world's leading manufacturer of prescription
21 contraceptives as well as the current market leader in oral and patch contraceptive products.
22 ORTHO-MCNEIL offers a range of prescription birth control options to women, including Ortho
23 Evra, the first transdermal contraceptive patch, ten birth control pills and two diaphragms.

24 25. The pharmaceutical drug at issue in this litigation is "Ortho Evra". Ortho Evra is
25 the first and only once a week birth control patch. It is worn on the skin for one week and
26 replaced on the same day of the week for three consecutive weeks, with the fourth week free
27 from the patch. Unlike traditional oral contraceptives, such as the birth control pill, that are
28 ingested and metabolized by the body's digestive system, the Ortho Evra patch continuously

1 releases estrogen and progestin *directly into* the bloodstream.

2 26. ORTHO-MCNEIL filed a new drug application for Ortho Evra on or about
3 December 21, 2000. In the same year, doctors at the FDA reviewing the clinical trials of the
4 Ortho Evra patch warned that blood clots could be a problem if the patch were approved. This
5 was after two of the women developed deep vein thrombosis (a blood clot that forms in the deep
6 veins of leg or pelvic region) which led to pulmonary embolism (a serious and deadly condition
7 of deep vein thrombosis where the clot breaks off into the lung and clogs an artery). One medical
8 reviewer wrote that it would be important to study users after Ortho Evra came into the market
9 for clot problems.

10 27. Despite those concerns, Ortho Evra received FDA approval for the prevention of
11 pregnancy in November of 2001. Since then, Ortho Evra has been prescribed to more than 4
12 million women and has become one of the fastest growing birth control method in the United
13 States.

14 28. Since its approval there have been many reports that indicate the serious risks
15 associated with the consumption of Ortho Evra. In particular, the FDA has logged 9,116 reports
16 of adverse reactions to the patch in a **17 month** period. This is significantly higher than 1,237
17 adverse reports generated in a **6 year** period for ORTHO-MCNEIL's oral contraceptive, Ortho
18 Tri-Cyclen. According to the FDA, this only represents 1% - 10% of patch related medical
19 problems so these adverse reactions are actually more prevalent.

20 29. Furthermore, reports provided by the FDA indicate that the risk of developing
21 and/or dying from a blood clot while using the Ortho Evra patch is at least three times higher
22 than when using birth control pills.

23 30. On November 10, 2005, the FDA required that the warning label for Ortho Evra
24 be updated to include a new warning indicating that use of Ortho Evra exposes women to a
25 higher level of estrogen than use of other birth control methods. Specifically, the new bolded
26 warning stated that women who use Ortho Evra are exposed to about 60% more total estrogen in
27 their blood than if they were taking a typical birth control pill containing 35 micrograms of
28 estrogen. Increased levels of estrogen exposes women to a greater risk of serious side effects,

1 particularly blood clots in the legs and lungs, heart attacks and strokes.

2 31. Ortho Evra was, and still continues to be, aggressively marketed as an easy to use,
3 safe, and effective alternative to oral contraceptives. Its main allure is in its convenience since
4 Ortho Evra only needs to be applied once a week, unlike oral contraceptive that need to be taken
5 daily to be effective.

6 32. Defendant ORTHO-MCNEIL failed to appropriately warn Plaintiffs and
7 prescribing physicians of the serious risks of strokes, pulmonary emboli, blood clots, deep vein
8 thrombosis, and heart attacks, as well as other severe permanent health problems.

9 33. Despite the higher levels of estrogen that are known to be released by Ortho Evra
10 and the blood clot warnings, the package insert states that "there is limited epidemiological data
11 available to determine whether safety with the transdermal route of administration is different
12 than the oral route". The package insert goes on to say that "the information contained in this
13 package insert is principally based on studies carried out in women who used combination **oral**
14 contraceptives...".

15 34. Defendant ORTHO-MCNEIL knew, or should have known, about the above
16 mentioned risks based upon the state of knowledge of ORTHO-MCNEIL as it existed at that
17 time. Additionally, ORTHO-MCNEIL failed to properly or adequately investigate the safety
18 concerns of Ortho Evra.

19 35. Defendant ORTHO-MCNEIL's conduct fell below the duty of care that was
20 owed by Defendants to Plaintiffs.

21 36. Defendant ORTHO-MCNEIL misrepresented the known risks associated with
22 the use of Ortho Evra. ORTHO-MCNEIL also made claims with regards to the safe and
23 efficacious nature of their product in the prevention of pregnancy.

24 37. Defendant ORTHO-MCNEIL negligently and recklessly failed to inform the
25 public, prescribing healthcare professionals and the FDA of the risks of strokes, pulmonary
26 emboli, blood clots, deep vein thrombosis, and heart attacks, as well as other severe permanent
27 health problems associated with use of their product, Ortho Evra.

28 38. Defendant ORTHO-MCNEIL was careless and negligent in their manufacturing,

1 testing, selling, distributing, merchandising, advertising, promoting, packaging, and marketing of
 2 Ortho Evra.

3 39. By reason of the foregoing, Plaintiffs have suffered from strokes, pulmonary
 4 emboli, blood clots, deep vein thrombosis, and heart attacks, as well as other severe permanent
 5 health problems.

6 **FRAUDULENT CONCEALMENT**

7 40. Any applicable statute of limitations have been tolled by the knowing and active
 8 concealment and denial of facts as alleged herein by the Defendants. Plaintiffs have been kept in
 9 ignorance of vital information essential to the pursuit of these claims, without any fault or lack of
 10 diligence on their part. Plaintiffs could not have reasonably discovered the dangerous nature and
 11 unreasonable adverse side effects associated with Ortho Evra. As a result, Plaintiffs did not
 12 discover the facts giving rise to these claims until less than one year before the filing of this
 13 Complaint.

14 41. Defendants are and were under a continuing duty to disclose the true character,
 15 quality and nature of the patch to Plaintiffs. Because of their concealment of the true character,
 16 quality and nature of the contraceptive, Defendants are estopped from relying on any statute of
 17 limitations defense.

18 **FIRST CAUSE OF ACTION**

19 *Negligence*

20 (Against Defendants ORTHO-MCNEIL and MCKESSON)

21 42. Plaintiffs incorporate by reference the allegations in all preceding paragraphs of
 22 this Complaint as though fully set forth in this paragraph.

23 43. Defendants had a duty to exercise reasonable care in the manufacture, sale,
 24 research, development, inspection, labeling, promoting, marketing, and/or distribution of Ortho
 25 Evra into the stream of commerce, including a duty to assure that this patch did not cause users
 26 to suffer from unreasonable, dangerous side effects.

27 44. Defendants ORTHO-MCNEIL and MCKESSON failed to exercise ordinary care
 28 in the manufacture, sale, testing, quality assurance, quality control, marketing and/or distribution
 of Ortho Evra into interstate commerce, in that Defendants knew or should have known that

1 using Ortho Evra created a high risk of unreasonable dangerous side effects, including but not
2 limited to the risk of strokes, pulmonary emboli, blood clots, deep vein thrombosis, and heart
3 attacks, as well as other severe permanent health problems.

4 45. Defendants ORTHO-MCNEIL and MCKESSON breached their duty to Plaintiffs
5 and were negligent in the licensing, testing, design, manufacture, packaging, warning,
6 advertising, promotion, distribution, and sale of Ortho Evra in that Defendants:

- 7 A. Failed to use ordinary care in designing and manufacturing the Ortho Evra
8 so as to avoid the aforementioned risks to Plaintiffs;
- 9 B. Failed to accompany Ortho Evra with proper warnings regarding the
10 possible adverse side effects associated with the use of the patch and the
11 comparative severity and duration of such adverse effects, i.e., the
12 warnings given did not accurately reflect the symptoms, scope or severity
13 of the side effects;
- 14 C. Failed to conduct adequate pre-clinical testing and post-marketing
15 surveillance to determine the safety and side effects of Ortho Evra;
- 16 D. Failed to provide adequate training to medical care providers for
17 appropriate use of Ortho Evra;
- 18 E. Failed to warn Plaintiffs, either directly or indirectly, orally or in writing,
19 about the following:
 - 20 (i) The need for comprehensive, regular monitoring to ensure early
21 discovery of potentially serious side effects like blood clots, deep
22 vein thrombosis and pulmonary emboli;
 - 23 (ii) The possibility of becoming injured, disabled or dying as a result
24 of using Ortho Evra.
- 25 F. Failed to adequately test and/or warn about the serious side effects of
26 Ortho Evra;
- 27 G. Failed to include adequate warnings with Ortho Evra that would alert
28 Plaintiffs, physicians, hospitals, and clinics, to the potential risks and the

nature, scope, severity, and duration of any serious side effects of Ortho-Evra;

- H. Continued to promote the efficacy and safety of Ortho Evra while providing little or no warnings, and downplaying any risks, even after Defendants knew of the risks of serious injury and/or death;
- I. Delayed warnings of, and then failed to provide adequate warnings about the serious injuries, which may have dissuaded medical providers from prescribing Ortho Evra and deprived women of information so that they can weigh the true risks against the benefits of prescribing Ortho Evra; and
- J. Were otherwise careless or negligent.

12 46. Despite the fact that Defendants knew or should have known that Ortho Evra
13 caused unreasonably dangerous side effects, Defendants continued and are currently continuing
14 to market, manufacture, distribute and/or sell Ortho Evra to consumers, including Plaintiffs and
15 their doctors.

16 47. Defendants knew or should have known that consumers, such as Plaintiffs, would
17 suffer injury as a result of Defendants' failure to exercise ordinary care as described above.

18 48. Plaintiffs are entitled to punitive damages because the Defendants' failure to warn
19 was reckless and without regard for the public's safety and welfare. The Defendants misled both
20 the medical community and the public at large, including Plaintiffs, by making false
21 representations about the safety of Ortho Evra. The Defendants downplayed, understated, and
22 disregarded their knowledge of the serious side effects associated with the use of Ortho Evra
23 despite available information demonstrating that their products were likely to cause serious and
24 potentially fatal side effects to users like Plaintiffs.

25 49. As a direct, proximate and legal result of the negligence, carelessness, other
26 wrongdoing and actions of the Defendants described herein, Plaintiff's were, and/or still are,
27 caused to suffer severe injuries including diminished enjoyment of life, strokes, pulmonary
28 emboli, blood clots, deep vein thrombosis, and heart attacks, as well as other severe permanent

1 health problems.

2 50. Based upon information and belief, Defendants actually knew of Ortho Evra's
3 defective nature, as set forth herein, but continued, and still continue, to design, manufacture,
4 market and sell the patch so as to maximize sales and profits at the expense of the health and
5 safety of the public, including Plaintiffs, in conscious disregard of the foreseeable harm caused
6 by the patch.

7 51. Defendants' conduct in the license, design, manufacturing, assembly, packaging,
8 warning, marketing, advertising, promotion, distribution and sale of Ortho Evra constituted
9 malice, oppression and fraud, including, but not limited to:

- 10 A. Aggressively marketing and promoting Ortho Evra, knowing the high
11 risks posed by failing to conduct sufficient pre-clinical and clinical testing
12 and adequate post-marketing surveillance;
- 13 B. Failing to include adequate warnings with Ortho Evra that would alert
14 consumers, physicians, hospitals, clinics, and other users to the potential
15 risks and the nature, scope, severity, and duration of any serious side
16 effects of the patch, particularly, strokes, pulmonary emboli, blood clots,
17 deep vein thrombosis, and heart attacks, as well as other severe permanent
18 health problems;
- 19 C. Continuing to promote the efficacy and safety of the patch, while
20 providing little or no warnings, and downplaying any risks, even after
21 Defendants knew of the increased risks associated with use of Ortho Evra
22 as opposed to oral contraceptives;
- 23 D. Delaying warnings of the dangerous side effects which may have
24 dissuaded medical providers from prescribing Ortho Evra so freely, and
25 depriving women of information so that they could weigh the true risks
26 against the benefits of using the patch, was fraudulent, knowing
27 misconduct, and/or conduct undertaken recklessly and with conscious
28 disregard for the safety of consumers such as the Plaintiffs, such as to

constitute desppicable conduct, and oppression, fraud and malice, and such conduct was at all times relevant ratified by the corporate Defendants herein, thereby entitling Plaintiff's punitive damages in an amount appropriate to punish and set an example of Defendant.

52. As a result of ORTHO-MCNEIL and MCKESSON's conduct, Plaintiffs suffered injuries and damages herein.

WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as set forth herein below.

SECOND CAUSE OF ACTION
Strict Product Liability - Failure to Warn
(Against Defendants ORTHO-MCNEIL and MCKESSON)

53. Plaintiffs incorporate by reference the allegations in all proceeding paragraphs of this Complaint as though fully set forth in this paragraph.

54. Defendants ORTHO-MCNEIL and MCKESSON are the manufacturer and/or supplier of Ortho Evra.

55. Ortho Evra manufactured and/or supplied by Defendants ORTHO-MCNEIL and MCKESSON was unaccompanied by proper warnings regarding all possible side effects associated with their use and the comparative severity, incidence, and duration of such adverse effects, i.e., the warnings given did not accurately reflect the signs, symptoms, incidence, scope or severity of the side effects.

56. Defendants failed to perform adequate testing that would have shown that Ortho Evra possessed serious potential side effects with respect to which full and proper warnings accurately and fully reflecting symptoms, scope and severity should have been made, both with respect to the use of the patch.

57. Ortho Evra manufactured and/or supplied by Defendants was defective due to inadequate post-marketing surveillance and/or warnings or instructions because, after the manufacturer knew or should have known of the risks of injury from Ortho Evra, they failed to provide adequate warnings to users or consumers of the patch and continued, and still continue, to aggressively promote Ortho Evra.

1 58. Ortho Evra manufactured and/or supplied by Defendants was defective because
2 Defendants were aware that the amount of estrogen that is released from the patch is much
3 higher than the levels associated with oral contraceptives.

4 59. As a direct, proximate and legal result of the negligence, carelessness, other
5 wrongdoing and actions of Defendants described herein, Plaintiffs have been injured as
6 described above.

7 60. Based upon information and belief, Defendants actually knew of the defective
8 nature of Ortho Evra, as set forth herein, but continued, and still continue, to design
9 manufacture, market and sell Ortho Evra so as to maximize sales and profits at the expense of
10 the health and safety of the public including Plaintiffs, in conscious disregard of the foreseeable
11 harm caused by Ortho Evra.

12 61. Plaintiffs could not, by reasonable exercise of care, have discovered the defects
13 and dangers of Ortho Evra.

14 62. Defendants conduct in the license, design, manufacturing, assembly, packaging,
15 warning, marketing, advertising, promotion, distribution, and sale of Ortho Evra constituted
16 malice, oppression and fraud, including, but not limited to:

- 17 A. Aggressively marketing and promoting Ortho Evra, knowing the high
18 risks posed by failing to conduct sufficient pre-clinical and clinical testing
19 and adequate post-marketing surveillance;
- 20 B. Failing to provide complete literature with regards to Ortho Evra, and
21 indicating the need for monitoring while on the patch;
- 22 C. Failing to include adequate warnings with Ortho Evra that would alert
23 consumers, physicians, hospitals, clinics and other users to the potential
24 risks and the nature, scope, severity, and duration of any serious side
25 effects of the drug, particularly the risk of strokes, pulmonary emboli,
26 blood clots, deep vein thrombosis, and heart attacks, as well as other
27 severe permanent health problems;
- 28 D. Continuing to promote the efficacy and safety of the drug, while providing

little or no warnings, and downplaying any risks, even after Defendants knew of the increased risks associated with Ortho Evra use;

E. Delaying warnings about the dangerous side effects which may have dissuaded medical providers from prescribing Ortho Evra so freely, and depriving women of information so that they could weigh the true risks against the benefits of using the patch, was fraudulent, knowing misconduct, and/or conduct undertaken recklessly and with conscious disregard for the safety of consumers such as the Plaintiffs, such as to constitute despicable conduct, fraud and malice, and such conduct was at all times relevant ratified by corporate Defendants herein, thereby entitling Plaintiffs to punitive damages in an amount appropriate to punish and set an example of Defendant.

63. Defendants' actions, as described above, were performed willfully, intentionally, and with reckless disregard for the rights of Plaintiffs and the public.

64. As a result of Defendants' conduct, Plaintiffs have sustained injuries described above.

65. Accordingly, Plaintiffs seek and are entitled to compensatory and punitive damages in an amount to be determined at trial.

WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as set forth herein below.

THIRD CAUSE OF ACTION

Breach of Express Warranty

(Against Defendants ORTHO-MCNEIL and MCKESSON)

66. Plaintiffs incorporate by reference the allegations in all preceding paragraphs of this Complaint as though fully set forth in this paragraph.

67. Defendants, ORTHO-MCNEIL and MCKESSON, through description, affirmation of fact, and promise relating to Ortho Evra, to the FDA, prescribing physicians, and the general public, including Plaintiffs, expressly warranted that Ortho Evra was safe and well accepted by users.

1 68. Defendants, ORTHO-MCNEIL and MCKESSON further expressly warranted
2 that Ortho Evra did not produce any side effects in excess of those risks associated with oral
3 contraceptives, that the side effects were reflected accurately in the warnings, and that it was
4 accurately tested and fit for its intended use.

5 69. Ortho Evra does not conform to these express representations because it is not
6 safe as its use produces serious adverse side effects including the risk of strokes, pulmonary
7 emboli, blood clots, deep vein thrombosis, and heart attacks, as well as other severe permanent
8 health problems.

9 70. As such, Defendants' product was neither in conformity to the promises,
10 descriptions or affirmations of fact made about the patch nor adequately contained, packaged,
11 labeled or fit for the ordinary purposes for which such goods are used.

12 71. Defendants knew or should have known that, in fact, said representations and
13 warranties were false and misleading in that Ortho Evra was not safe and/or fit for its intended
14 use, and in fact resulted in serious injuries to the user.

15 72. Plaintiffs relied on the express warranties of the Defendants herein. Members of
16 the medical community, including physicians, and other healthcare professionals, relied upon the
17 representations and warranties of the Defendants for use of Ortho Evra in prescribing,
18 recommending, and/or dispensing the product.

19 73. Defendants thereafter breached their express warranties to Plaintiffs by: (i)
20 manufacturing, marketing, packaging, labeling, and selling Ortho Evra to Plaintiffs in such a way
21 that misstated the risks of injury, without warning or disclosure thereof by package and label of
22 such risks to Plaintiffs or their prescribing physicians or pharmacists, or without so modifying or
23 excluding such express warranties; (ii) manufacturing, marketing, packaging, labeling, and
24 selling Ortho Evra to Plaintiffs, which failed to prevent pregnancy in a safe manner and without
25 injury; and (iii) manufacturing, marketing, packaging, labeling, and selling Ortho Evra to
26 Plaintiffs, thereby causing injury to each.

27 74. As a direct and proximate result of Defendants' conduct the Plaintiffs were and
28 still are caused to suffer severe injuries and physical pain including diminished enjoyment of

1 life, strokes, pulmonary emboli, blood clots, deep vein thrombosis, and heart attacks, as well as
 2 other severe permanent health problems.

3 75. Plaintiffs are entitled to punitive damages because Defendants' failure to warn
 4 was reckless and without regard to their welfare. Defendants misled both the medical community
 5 and the public at large, including Plaintiffs, by making false representations about the safety of
 6 their product. Defendants downplayed, understated, and disregarded their knowledge of the
 7 serious side effects associated with the use of Ortho Evra, despite available information
 8 demonstrating that it was likely to cause serious and sometimes fatal side effects to users.

9 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as set
 10 forth herein below.

11 **FOURTH CAUSE OF ACTION**

12 **Breach of Implied Warranty**

13 (Against Defendants ORTHO-MCNEIL and MCKESSON)

14 76. Plaintiffs incorporate by reference the allegations in all preceding paragraphs of
 15 this Complaint as though fully set forth in this paragraph.

16 77. At the time Defendants ORTHO-MCNEIL and MCKESSON marketed, sold, and
 17 distributed Ortho Evra, for use by Plaintiffs, Defendants knew of the use for which Ortho Evra
 18 was intended and impliedly warranted the patch to be of merchantable quality and safe and fit for
 19 its intended use.

20 78. Defendants ORTHO-MCNEIL and MCKESSON impliedly represented and
 21 warranted to Plaintiffs, healthcare professionals and the FDA that the Ortho Evra it was
 22 supplying was safe and fit for ordinary use.

23 79. Plaintiffs and members of the medical community relied on Defendants
 24 warranties that their product, Ortho Evra, was of merchantable quality and safe and fit for its
 25 intended use.

26 80. Contrary to such implied warranties, Ortho Evra was not of merchantable quality
 27 or safe or fit for its intended use, because it was unreasonably dangerous and unfit for the
 28 ordinary purposes for which it was used, as described above.

81. Defendant's conduct in the license, design, manufacturing, assembly, packaging, warning, marketing, advertising, promotion, distribution, and sale of Ortho Evra constituted malice, oppression and fraud, including but not limited to:

- A. Marketing and promoting the product aggressively, knowing the high risks posed by failing to conduct sufficient pre-clinical and clinical testing and adequate post-market surveillance;
- B. Failing to provide complete literature with regards to Ortho Evra and indicating the need for monitoring while on the patch;
- C. Failing to include adequate warnings with Ortho Evra that would alert consumers, physicians, hospitals, clinics and other users of the potential risks and the nature, scope, severity and duration of any serious side effects of the patch, particularly, the risks of strokes, pulmonary emboli, blood clots, deep vein thrombosis, and heart attacks, as well as other severe permanent health problems;
- D. Continuing to promote the efficacy and safety of Ortho Evra, while providing little or no warnings, and downplaying any risks, even after the Defendants knew of the increased risks associated with use of their product;
- E. Delaying warnings of, and then failing to provide adequate warnings about the dangerous side effects which may have dissuaded medical providers from prescribing Ortho Evra so freely, and depriving women of information so that they could weigh the true risks against the benefits of prescribing the product, was fraudulent, knowing misconduct, and/or conduct undertaken recklessly and with conscious disregard for the safety of consumers like Plaintiffs, such as to constitute despicable conduct, oppression, fraud and malice, and such conduct was at all times relevant ratified by the corporate Defendants herein, thereby entitling Plaintiffs punitive damages in an amount appropriate to punish and set an example

1 of the Defendants.

2 82. As a direct, proximate and legal result of Defendants' negligence, carelessness
3 and other wrongdoing described herein, Plaintiffs have sustained severe injuries as described
4 above.

5 83. Based upon information and belief, Defendants actually knew of Ortho Evra's
6 defective nature, as set forth herein, but continued to design, manufacture, market, and sell Ortho
7 Evra to maximize sales and profits at the expense of the health and safety of the public, including
8 Plaintiffs in conscious disregard of the foreseeable harm caused by the patch.

9 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as set
10 forth herein below.

11 **FIFTH CAUSE OF ACTION**

12 *Negligent Misrepresentation*

13 (Against Defendants ORTHO-MCNEIL and MCKESSON)

14 84. Plaintiffs incorporate by reference the allegations in all preceding paragraphs of
this Complaint as though fully set forth in this paragraph.

15 85. Defendants ORTHO-MCNEIL and MCKESSON, having undertaken to prepare,
16 design, research, develop, manufacture, inspect, label, market, promote, and sell Ortho Evra,
17 owed a duty to Plaintiffs and the medical community to provide them accurate and complete
18 information regarding this product.

19 86. The Defendants' advertising program, by containing affirmative
20 misrepresentations and omissions, falsely and deceptively sought to create the image and
21 impression that the use of Ortho Evra was safe, and had no unacceptable side effects.

22 87. On information and belief, Plaintiffs aver that Defendants failed to disclose,
23 misstated, downplayed, and understated the health hazards and risks associated with the use of
24 Ortho Evra. Defendants deceived potential users and prescribers of the patch by relaying only
25 allegedly positive information, while concealing, misstating and downplaying the known adverse
26 and serious health effects.

27 88. Defendants knew or were aware or should have known or been aware that Ortho
28 Evra had been insufficiently tested and that it lacked necessary warnings. Defendants were or

should have been in possession of evidence demonstrating that their product created a high risk of unreasonable, dangerous side effects, including but not limited to strokes, pulmonary emboli, blood clots, deep vein thrombosis, and heart attacks, as well as other severe permanent health problems. Nonetheless, Defendants continued to market Ortho Evra by providing false and misleading information with regard to its safety and efficacy.

89. Plaintiffs and their doctors justifiably relied to their detriment upon Defendants' positive misrepresentations concerning Ortho Evra.

90. As a result of Defendants' conduct, Plaintiffs have sustained injuries as described above. Accordingly, Plaintiffs seek and are entitled to compensatory and punitive damages in an amount to be determined at trial.

WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as set forth herein below.

SIXTH CAUSE OF ACTION

Fraud

(Against Defendants ORTHO-MCNEIL and MCKESSON)

91. Plaintiffs incorporate by reference the allegations in all preceding paragraphs of this Complaint as though fully set forth in this paragraph.

92. ORTHO-MCNEIL and MCKESSON, having undertaken to prepare, design, research, develop, manufacture, inspect, label, market, promote and sell Ortho Evra, owed and continue to owe a duty to provide accurate and complete information regarding their product.

93. Defendant deceptively sought to create the image and impression that the use of Ortho Evra was just as safe as the oral contraceptives already on the market, and had no unacceptable side effects. by intentionally distributing false information to Plaintiffs, the general public, healthcare professionals and the FDA.

94. On information and belief, Plaintiff's aver that the Defendants intentionally concealed, misstated, downplayed, suppressed, and ignored test results that were unfavorable to the Defendants as well as the results that revealed that Ortho Evra was not safe in the prevention of pregnancy. Defendants deceived potential users and prescribers of the patch by disseminating only allegedly positive information while concealing, misstating and downplaying the known

1 adverse and serious health effects. Defendants falsely and deceptively kept relevant information
2 from potential Ortho Evra users and minimized safety concerns.

3 95. These representations were made with the purpose of deceiving and defrauding
4 the public, the FDA and the Plaintiffs in order to gain their confidence and falsely ensure the
5 quality and fitness of Ortho Evra.

6 96. In representations made to Plaintiffs, physicians and the public in general,
7 Defendants' fraudulently concealed and intentionally omitted information included, but not
8 limited to the following:

- 9 A. That Ortho Evra was not as safe as other forms of contraception;
- 10 B. That the amount of estrogen Ortho Evra users are exposed to is much
11 higher than the levels that oral contraceptive users are exposed to;
- 12 C. The risk of adverse effects is more likely with Ortho Evra use because of
13 the higher levels of estrogen that the user is exposed to;
- 14 D. That even after concerns about serious adverse effects were known, Ortho
15 Evra was not adequately tested.

16 97. Defendants were or should have been in possession of evidence demonstrating
17 that their product caused serious side effects. Nevertheless, they continued to market Ortho Evra
18 and represent falsely in their documents that Ortho Evra was safe and did not present any health
19 risks above those associate with the oral contraceptives on the market.

20 98. Defendants knew or should have known that the public, including the Plaintiffs
21 would rely on the information that was being distributed.

22 99. Plaintiffs did in fact rely on and believe Defendants' representations to be true
23 and relied upon the representations, and were induced to purchase and use Ortho Evra. Plaintiffs
24 did not discover the true facts with respect to the dangerous and serious side effects or the false
25 representations that were made by Defendants, nor could the Plaintiffs have discovered the true
26 facts with reasonable diligence.

27 100. Had the Plaintiffs known of the true facts with respect to the dangerous and
28 serious health risks of Ortho Evra, Plaintiffs would not have purchased or used Ortho Evra nor

1 would they have relied on Defendants' false representations.

2 101. Defendants concealment and omissions of material facts concerning the safety of
3 Ortho Evra was made purposefully, wilfully, wantonly and/or recklessly, to mislead Plaintiffs,
4 and their physicians into continued use and/or dispensing of Ortho Evra.

5 102. Plaintiffs are entitled to punitive damages because the failure of the Defendants to
6 warn was reckless and without regard for the public's safety and welfare. Defendants misled
7 both the medical community and the general public, including the Plaintiffs, through false
8 representations about the safety of Ortho Evra.

9 103. The Defendants' actions, as described above, were performed willfully,
10 intentionally, and with reckless disregard for the rights of Plaintiffs and the public.

11 104. Accordingly, Plaintiffs seek and are entitled to compensatory and punitive
12 damages in an amount to be determined at trial.

13 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as set
14 forth herein below.

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3 **PRAYER FOR RELIEF**

4

5 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as
6 follows for:

7 1. Costs of suit incurred herein;

8 2. Special damages according to proof;

9 3. General damages according to proof;

10 4. Punitive or exemplary damages according to proof;

11 5. Prejudgment interest on these losses;

12 6. For such other and further relief as the Court deems just.

13 DATED: November 9, 2007

14 KHORRAMI, POLLARD & ABIR, LLP

15 By: 

16 SHAWN KHORRAMI, ESQ.
17 Attorney for Plaintiffs

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury in this action.

DATED: November 9, 2007

KHORRAMI, POLLARD & ABIR, LLP

By: Shawn Khorrami
SHAWN KHORRAMI, ESQ.
Attorney for Plaintiffs

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CLERK'S OFFICE, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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 2 BRENDA N. BUONAIUTO (State Bar No. 173919)
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8 Attorneys for Defendants
 9 ORTHO-MCNEIL PHARMACEUTICAL, INC.
 10 and MCKESSON CORPORATION

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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

COPY SBA
 Case No. 06-7551
 DECLARATION OF GREG YONKO IN
 SUPPORT OF NOTICE OF REMOVAL
 AND REMOVAL OF ACTION UNDER
 28 U.S.C. § 1441(b) [DIVERSITY]

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Attorneys for Defendants
 ORTHO-MCNEIL PHARMACEUTICAL, INC.
 and MCKESSON CORPORATION

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

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 SUPPORT OF NOTICE OF REMOVAL
 AND REMOVAL OF ACTION UNDER
 28 U.S.C. § 1441(b) [DIVERSITY]

DRINKER BIDDLE & REATH LLP
 50 Fremont Street, 20th Floor
 San Francisco, CA 94105

577376v1

DECLARATION OF GREG YONKO IN SUPPORT OF NOTICE OF REMOVAL AND REMOVAL Case No.

1 individual; GENEVIEVE RENFRO, an
2 individual; JENNIFER ROUSE, an
3 individual; ELIZABETH SMITH, an
4 individual; TJIUANA STEWART-MARK,
5 an individual; LATOSHA UNDERWOOD,
6 an individual; COSONDA WEAVER, an
7 individual; SAMANTHA WINCHESTER,
8 an individual;

9 Plaintiffs,

10 v.
11
12 ORTHO-MCNEIL PHARMACEUTICAL,
13 INC., a Delaware Corporation;
14 MCKESSON CORP. and DOES 1-500,
15 inclusive,
16
17 Defendants.

18 I, GREG YONKO, declare:

19 1. I am Senior Vice President - Purchasing for McKesson Corporation
20 ("McKesson"). I make this Declaration based on my personal knowledge and/or
21 information assembled by employees of McKesson, which I am informed and believe to
22 be true. I would and could competently testify to the matters stated in this Declaration if
23 called as a witness.

24 2. McKesson was and is a Delaware corporation, with its principal place of
25 business in San Francisco, California.

26 3. McKesson was served with the Summons and Complaint in this action on
27 November 15, 2006.

28 4. McKesson consents to the removal of this action.

5. McKesson had no involvement in the development or preparation of the
6 prescribing information for Ortho Evra® and did not have any responsibility for the
7 content of other written warnings concerning Ortho Evra®.

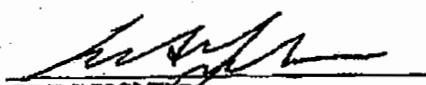
8. At no time has McKesson had any involvement with the manufacture,
9 development, or testing of Ortho Evra®.

10 7. At no time has McKesson had any involvement with the packaging,

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1 labeling, advertising, promotion, or marketing of Oriho Evra®.

2 I declare under penalty of perjury under the laws of the United States of America that
3 the foregoing is true and correct. Executed on December 12 2006, in San Francisco,
4 California.

5 
6 GREG YONKO

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DRINKER BIDDLE & REATH LLP
60 Fremont Street, 20th Floor
San Francisco, CA 94105

DECLARATION OF GREG YONKO IN SUPPORT OF NOTICE OF REMOVAL AND REMOVAL CASE NO.

KAYE SCHOLER LLP

23 APR 28 2008

CENTRAL DISTRICT OF CALIFORNIA
DE-114

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

In re REZULIN LITIGATION

CASE NO. CV 03-1647-R(RZx)

10 JACKIE BARLOW; CARMA DEKOVEN;
11 ERNESTINE DELAFONT; ZOE EGGER-
12 MUKARVITZ; and SAMUEL
13 GODBOULD.

Plaintiffs,

14 v.
15 WARNER-LAMBERT CO.; PFIZER INC.;
16 JERROLD OLEFSKY; McKESSON CORP.,
et al.

Defendants.

[PROPOSED] ORDER
DENYING PLAINTIFFS'
MOTION FOR REMAND

18 Defendants removed this action from state court to this Court alleging diversity
19 jurisdiction. Defendants asserted that Jerrold Olefsky and McKesson Corp., both of
20 whom are California residents, were fraudulently joined. Plaintiffs moved to remand
21 to state court. The motions came on for hearing by the Court on April 21, 2003.

22 Having considered the motions and other documents in support of and in
23 opposition to the motions, having heard the arguments of counsel, and being fully
24 advised in the matter, the Court denies the motion.

25 The Court finds that Dr. Jerrold Olefsky ("Dr. Olefsky"), a patent-holder and
26 clinical investigator, owed no legal duty to any of the plaintiffs, and, therefore, there
27 is no possibility that the plaintiffs can prove a cause of action against Dr. Olefsky.
28 Thus, Dr. Olefsky must be disregarded for purposes of determining federal diversity

KAYE SCHOLER LLP

1 jurisdiction.

2 The Court further finds that there is no possibility that plaintiffs could prove a
3 cause of action against McKesson, an entity which distributed this FDA-approved
4 medication to pharmacists in California. Pursuant to comment k of the Restatement
5 (Second) of Torts Section 402A and California law following comment k, a
6 distributor of a prescription drug is not subject to strict liability.

7 Accordingly, this Court has diversity jurisdiction over each of these actions.

8 The motion to remand is denied.

9 **IT IS SO ORDERED.**

10 Dated: April 28, 2003

11 **MANUEL L. REAL**

12 **MANUEL L. REAL**
13 **UNITED STATES DISTRICT JUDGE**

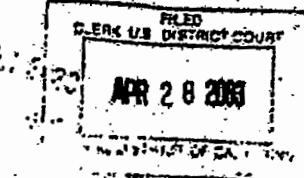
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21 By: Robert Barnes
22 Robert Barnes
23 Attorneys for Defendants
24 WARNER-LAMBERT COMPANY and PFIZER INC.

KAYE SCHOLER LLP



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

In re REZULIN LITIGATION

CASE NO. CV 03-1643-R(RZK)

DIANE SKINNER; and DIANE YBARRA,
Plaintiffs,

[PROPOSED] ORDER
DENYING PLAINTIFFS'
MOTION FOR REMAND

v.
WARNER-LAMBERT CO.; PFIZER INC.;
JERROLD OLEFSKY; McKesson Corp.,
et al.

Defendants.

Defendants removed this action from state court to this Court alleging diversity jurisdiction. Defendants asserted that Jerrold Olefsky and McKesson Corp., both of whom are California residents, were fraudulently joined. Plaintiffs moved to remand to state court. The motions came on for hearing by the Court on April 21, 2003.

Having considered the motions and other documents in support of and in opposition to the motions, having heard the arguments of counsel, and being fully advised in the matter, the Court denies the motion.

The Court finds that Dr. Jerrold Olefsky ("Dr. Olefsky"), a patent-holder and clinical investigator, owed no legal duty to any of the plaintiffs, and, therefore, there is no possibility that the plaintiffs can prove a cause of action against Dr. Olefsky. Thus, Dr. Olefsky must be disregarded for purposes of determining federal diversity jurisdiction.

1 The Court further finds that there is no possibility that plaintiffs could prove a
2 cause of action against McKesson, an entity which distributed this FDA-approved
3 medication to pharmacists in California. Pursuant to comment k of the Restatement
4 (Second) of Torts Section 402A and California law following comment k, a
5 distributor of a prescription drug is not subject to strict liability.

6 Accordingly, this Court has diversity jurisdiction over each of these actions.

7 The motion to remand is denied.

8 **IT IS SO ORDERED.**

9 Dated: April 23, 2003

10 **MANUEL L. REAL**

11 **MANUEL L. REAL**
12 **UNITED STATES DISTRICT JUDGE**

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